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MEDITERRANEAN SHIPPING COMPANY, S.A.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LIBERTY MUTUAL GROUP INC.
as subrogee of BODGER SEEDS, LTD.,

Plaintiff,

- against -

MEDITERRANEAN SHIPPING COMPANY S.A.,

Defendant,

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ECF CASE

08 Civ. 00223 (JSR)

**AFFIRMATION OF
DOMINICK MECKY
IN SUPPORT OF
DEFENDANT’S MOTION
FOR SUMMARY
JUDGMENT**

DOMINICK MECKY affirms in support to defendant’s motion for summary judgment the following under the penalties of perjury under the laws of the United States of America:

1. I am presently employed by Seatrade Investment (EA) Ltd. (“Seatrade”), the agent of defendant MEDITERRANEAN SHIPPING COMPANY S.A. (“MSC”) in Tanga, Tanzania. I hold the position of Branch Manager at the Tanga office and my duties, among other things, includes overseeing all cargo bookings and shipments. I have held this position for almost two years and have personal knowledge of the shipment at issue (“subject shipment”) and of the facts contained herein.
2. As is commonly known in the shipping industry here in Tanga, MSC, like other large ocean container carriers, employs a “feeder system” which requires numerous trans-shipment ports. The customary route for such a move from Tanga to

Long Beach, California, is from Tanga to Dar es Salaam to Jeddah to Nigbo/Chiwan to Long Beach (“Asian Route”), aboard four or five different vessels. The average time to complete such a voyage is 65-70 days. Obviously, numerous factors could slightly increase or decrease the length of any given voyage. The less frequent route from Tanga to Long Beach is via Europe, the Caribbean and the Panama Canal (“European Route”). The average length of the European Route is about the same as the Asian Route, and also involves the use of numerous MSC vessels and about four or five trans-shipment ports.

3. Prior to the subject shipment, the shipper, Maua Arusha Ltd. (“Maua”) had used MSC to transport shipments of flower seeds from Tanga to mainly various European ports. On all of these prior occasions, Maua requested either a 20’ or 40’ standard dry van container to carry their cargo. On all of these prior shipments, no special cargo handling instructions were provided to us. All of these prior voyages were performed without incident, and involved trans-shipment ports, where Maua’s containers were placed on MSC feeder vessels.

4. Sometime in January 2007, Maua made a booking with our office to transport a shipment of flower seeds from Tanga to Long Beach, California (“Subject Shipment”). Maua requested a 20’ standard dry van be used for the Subject Shipment. At the time of booking, Maua knew that MSC employed a “feeder system” which involved the cargo being trans-shipped at various intermediary ports.

5. As was the case with all prior shipments, Maua did not provide our office with any specific carrying instructions as to how MSC should care for the Subject Shipment during the ocean transit.

6. As per customary procedures, we subsequently provided Maua with a 20' standard dry van container and a seal to place on the container doors after the container was loaded and locked.

7. The Subject Shipment involved an FCL/FCL (house-house) which required the shipper to load, lock and seal the container without MSC's participation. Our office provided the empty container and container seal to Maua. As per custom and practice, no one from our office was present when Maua loaded (stuffed), locked and sealed the container. However, we understand a customs representative was present when this occurred.

8. Following the Subject Voyage, Maua has since made other flower seeds bookings. Two of these subsequent bookings involved shipments of flower seeds from Tanga to Long Beach. Specifically, on February 20, 2007 Maua shipped one 20' dry van container to Long Beach and on November 17, 2007 they shipped another 20' dry van container to Long Beach, and, in fact, both shipments followed the usual "Asian Route" and took over two months to complete. The latter shipment took 82 days to complete. Both shipments apparently arrived in good condition because no claim was ever lodged against MSC in regard to these two shipments. Both of these shipments were performed using four MSC vessels.

9. In all of the dealings our office has had with Maua over the years, Maua has never provided us with any specific carrying instructions in regard to any of their shipments and have never requested that their cargo arrive within any set time period. Moreover, all of the shipments MSC has performed for Maua were completed

through the use of MSC's feeder system and involved the containers being discharged at various intermediate ports.


10. Moreover, at no time did they ever request that any of their shipments be carried in a refrigerated container.

11. While it is common practice for MSC to carry refrigerated containers aboard their vessels, MSC does not offer refrigerated container service in Tanga, Tanzania, because of a general lack of demand. (The freight rate for a refrigerated container is considerably more expensive than a standard dry van container and our clients do not want to pay those higher rates.)

12. Although MSC does not offer refrigerated container service from Tanga, MSC's competitor Maersk Lines does offer such a service for their ships that call at Tanga.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on: August 27, 2008


Dominick Mecky